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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,939	11/21/2000	Jay C. Hsu	KCX-360 (15633)	9825

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EXAMINER	
JOYNES, ROBERT M	

ART UNIT	PAPER NUMBER
1615	5

DATE MAILED: 12/03/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/717,939	HSU ET AL.	
	Examiner	Art Unit	
	Robert M. Joynes	1615	

-- The MAILING DATE of this communication appears on th cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Receipt is acknowledged of applicants' Information Disclosure Statement filed on April 4, 2001.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 7, 10, 11, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Krzysik (US 5869075). Krzysik teaches a tissue product that has been treated with a lotion composition (Col. 1, lines 41-58). The lotion composition comprises water (Col. 3, lines 1-15), polyethylene glycol (Col. 3, lines 16-27), a fatty alcohol (Col. 3, lines 28-34), an emollients (Col. 4, lines 13-24), an emulsifier (Col. 4, lines 13-24) as well as other ingredients for skin care (Col. 3, line 35 – Col. 4, line 10). The lotion composition adds about 0.5% to about 40% weight percent to the paper product (Col. 4, lines 26-39). The paper products the lotion is applied to are facial tissue, bath tissue, paper towels, dinner napkins and the like (Col. 4, lines 46-57).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6, 7, 10, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik. The teachings of Krzysik are discussed above. Krzysik does not expressly teach the exact ranges of the ingredients of the lotion composition.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to vary the amounts of ingredients in a lotion composition.

While the reference does not teach the complete concentration range, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. *In re Aller*, 220 F.2d 454, 105 USPQ 233, 235 (CCPA 1955).

One of ordinary skill in the art would have been motivated to do this to prepare lotion compositions with additional ingredients that achieve the same or similar expected results.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claims 4, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Luu et al. (US 5871763). The teachings of Krzysik are discussed above. Krzysik does not expressly teach the emollient to be C_{12} - C_{15} alkyl benzoate.

Luu teaches that suitable emollients for a lotion composition are silicones, phospholipids, oils (synthetic and natural) and benzoate ester emollients (C_{12} - C_{15} alkyl benzoate) (Col. 7, line 33 – Col. 8, line 62).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to substitute one emollient in a lotion composition for another suitable emollient.

One of ordinary skill in the art would have been motivated to do this prepare lotion compositions with emollients that provide differing properties (i.e., emollients that lubricate or moisturize the skin as opposed to those that retard moisture loss or maintain the skin moisture/vapor balance (Luu, Col. 7, lines 33-40).

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Mackey et al (US 5624676). The teachings of Krzysik are discussed above. Krzysik does not expressly teach that the emulsifier is polyoxyethylene stearyl ether or a steareth.

Mackey teaches that steareth compounds are known emulsifiers (Col. 21, lines 3-9).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to substitute any emulsifier for another suitable emulsifier, namely a steareth compound.

One of ordinary skill in the art would have been motivated to do this to prepare a lotion composition with an emulsifier that is suitable for different emollients and stabilizer agents.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Wagner et al. (US 5948416). Krzysik does not expressly teach that the humectant used is glycerin. Krzysik also does not expressly teach that the humectant is present in the lotion in amount between about 10% and 40%.

Wagner teaches a lotion composition that contains a humectant in amounts from about 0.1% to about 20% (Col. 12, lines 50-59). Wagner further teaches the humectant to be glycerin (Col. 13, lines 13-25).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Blieszner et al. (US 5648083). The teachings of Krzysik are discussed above. Krzysik does not expressly teach that the skin conditioning agent to be dimethicone.

Blieszner teaches dimethicone as a skin care compound used as a barrier agent (Col 4, lines 36-67).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to incorporate a skin car compound such as dimethicone into a lotion composition.

One of ordinary skill in the art would have been motivated to do this prepare a lotion that provides lubrication for the skin.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claims 16-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik in view of Wagner, further in view of Luu, further in view of Blieszner furthering view of Warner et al. (US 5716692). The teachings of Krzysik, Wagner, Luu and Blieszner are all discussed above. Krzysik, Wagner, Luu and Blieszner do not expressly teach the type of paper that the lotion must be incorporated on or the various methods of incorporating the lotion onto the paper.

Warner teaches a lotion composition that imparts a soft, lubricious, lotion like feel when applied to paper (Col. 3, lines 39-59). Warner further discusses the different paper that can be used for the invention (Col. 4, line 27 – Col. 8, line 33). Still further, Warner teaches the different way the paper can be treated with the lotion (Col. 16, line 32 – Col. 18, line 53).

Krzysik teaches the basic paper product treated with a lotion composition. Luu teaches the emollient to be C_{12} - C_{15} alkyl benzoate. Mackey teaches the emulsifier to be a steareth compound. Wagner teaches the humectant to be glycerin. Blieszner teaches the skin care agent to be dimethicone. Warner teaches how to treat the paper with the lotion.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to prepare a lotion composition comprising water, an emollient, an emulsifier, a fatty alcohol, a skin conditioning agent and additional ingredient (an antimicrobial or a preservative) that would be suitable to treat a paper product.

One of ordinary skill in the art would have been motivated to do this to prepare a product that cleans the skin effectively while providing comfort by lubricating or moisturizing the skin.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Joynes whose telephone number is (703) 308-8869. The examiner can normally be reached on Monday through Friday 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Gollamudi S. Kishore, PhD
Primary Examiner
Group 1600

Robert M. Joynes
Patent Examiner
Art Unit 1615
November 29, 2001